

SA v Badenhorst [2018] ACTSC 216 (21 May 2018) – Australian Capital Territory Supreme Court

‘Evidence’ – ‘Good behaviour bond’ – ‘Intermediate sanctions’ – ‘Sentencing’ – ‘Sentencing options’

Charges: Assault x 1

Appeal type: Appeal against decision to refuse adjournment; appeal against sentence.

Facts: In the course of sentencing submissions, the Magistrate was not willing to accept a submission relating to the likely impact of a conviction upon the appellant’s employment. The appellant sought an adjournment to obtain evidence to put before the Magistrate. The Magistrate refused the request.

Issues: Whether the Magistrate fell into error in refusing the application for an adjournment.

Decision and Reasoning: Burns J upheld the appeal.

The Magistrate’s refusal of an adjournment was unreasonable so as to bespeak error ([5]). Having received fresh evidence (a letter from the principal of the school where the appellant was employed), Burns J held that, if a conviction was recorded, she would lose her ‘working with children’ approval and, consequently, her job as a teacher. Such an outcome would be disproportionate compared to the nature of the offence ([11]).

His Honour took into account the appellant’s character, antecedents, age, health and mental condition, as well as the seriousness of the offence and extenuating circumstances in which the offence was committed.

His Honour noted that there is no rule of law that a domestic violence offence cannot be the subject of non-conviction order ([15]). Consequently, the conviction was set aside and a non-conviction order made. The Court also imposed a good behaviour order.